

available when a passport is denied, the applicant shall be accorded the right to appear, to be represented by counsel, to present evidence, to be informed of the evidence against him and the source of such evidence, and to confront and cross-examine adverse witnesses. These are the essential elements of due process. Rooted in experience, they afford indispensable means toward the rendering of fair and reasonable judgments.

Mr. WALTER wants the Department of State to abandon these procedures. He wants the Department to deny passports to citizens of the United States on the mere say-so of anonymous informers, without allowing the applicant to confront the informers and cross-examine them, without allowing even the officials of the Department to know the identity of the informers. Apart from the fact that the Supreme Court has expressly declared that such procedure is forbidden by the Constitution, it is forbidden by common sense as well. For decisions based on such evidence are not judgments at all; they are nothing more than capricious and arbitrary guesses.

No one can question Mr. WALTER's zeal to protect American security. But what kind of America will he have made secure if its citizens can be denied constitutional rights and deprived of liberty by the mere whim of administrative officers? We congratulate the Department of State for restoring fairness to its passport procedures. "For," as Judge Charles Fahy put it recently in an essay on "The Right To Travel," "liberty is precious and one may be deprived of it only by methods which are fair and for reasons which are sound and rest on the common good, on a good so great as to outweigh in some circumstances the great good of individual liberty."

Mr. MORSE. Mr. President, I was so moved by the editorial that I saw fit to send a letter to the Attorney General of the United States this morning on the subject of passports because, as Senators know, for years I have taken a very definite position in the Senate in regard to the constitutional questions that have been involved in the passport controversy. I wrote to the Attorney General as follows:

HON. ROBERT KENNEDY,  
Attorney General.

DEAR MR. KENNEDY: This letter is to advise you of my gratification with the regulations you worked out with the Department of State to govern the issuance of passports to persons believed to be Communists. In my opinion, it is long past time for the executive and legislative branches of the Federal Government to observe the provisions of the Constitution which too often are left to the courts alone to protect.

I know from my own experience that this area of domestic security against the Communist conspiracy is one of the most misunderstood issues of the cold war. As you know, after the U.S. Supreme Court ruled that the State Department could not withhold passports in the absence of legislative authority to do so, the previous administration tried to get Congress to pass such legislation. Unfortunately, it also sought congressional sanction of the use of star-chamber methods in determining whether a passport should be withheld.

The use of secret information, available only to the official making the decision and denied to the individual who is exercising a plain right is nothing but a police-state procedure. Whether the practice is used in connection with passports or any other official matter is the earmark of totalitarianism. Secrecy is one of the principal abuses of executive power from which our constitu-

tional forefathers tried to save the American people.

The right to know the identity of an accuser, to know the nature of the accusation, and the right to offer rebuttal are basic to due process of law. It is always astonishing to me that some people would destroy these Constitutional guarantees of due process of law in the name of defending the Constitution.

It was for this reason that I opposed this legislation in 1958 and again in 1959. I especially objected to the attempt to rush a bill through the Congress in the closing days of the 86th Congress, with only a few days of hearings. I therefore objected to the holding of hearings while the Senate was in session, and as a result, no final action was taken. It was rather shocking to me that when members of the Foreign Relations Committee proposed legislation authorizing the withholding of passports with proper procedural safeguards, the Department of State declared: "Moreover, the Department must oppose any provision which might require the Secretary to make his determination on a particular passport application only on the basis of information and sources thereof which could be disclosed in open court."

Obviously, to make the determination on any other basis is repugnant to the terms and to the principles of our Constitution. I am pleased that you have now made this perfectly clear. I am also pleased that this battle I waged against police-state methods has been vindicated, and I am so informing Mr. Roger Jones, the Deputy Under Secretary of State for Administration, as well as yourself.

With kindest regards,  
Sincerely,

WAYNE MORSE.

Mr. President, this announced policy of the administration represents a very important contribution to constitutional guarantees on the part of this administration. It is a reaffirmation, with no question of doubt, with no equivocation, that these precious constitutional rights of due process will be respected by this administration. I congratulate the President of the United States that under his administration this very clear and unequivocal position in regard to the passport issue has been announced.

#### THE CENTRAL INTELLIGENCE AGENCY

Mr. MORSE. Mr. President, I am one who is very much disturbed and concerned about the discussions which have been carried on in the press with respect to the nomination of Mr. McCona as Director of the CIA. I have reached no final determination as to my own position on that nomination, because all the facts are not in. Before I make my final decision, I shall await the hearings before the committee, the report of the committee, and my own analysis of the record as it is finally presented to me as a Member of the Senate.

The most respectfully say, however, in view of the information which has already been publicized, that the burden of proof is on the administration to justify this nomination. Every shadow of doubt as to the qualification of this nominee ought to be removed.

Mr. President, we are dealing here with an operation of an agency which also gives me great concern as a constitution-

alist. We are dealing here with an agency in which the people do not have very effective checks as of now. We are dealing here with an agency whose operations are conducted in complete secrecy, even so far as the elected representatives of a free people in the Congress of the United States are concerned.

I hold to the point of view that in our Republic the adoption of procedures of complete secrecy are difficult to justify under our constitutional system. I have never been one who holds to the point of view that the CIA should be allowed to operate as it now operates, in complete secrecy with respect to the attaining of knowledge of its actions by the elected representatives of a free people in the parliamentary body in our form of government, which is the Congress of the United States. Why do I say that? I say it as a constitutionalist. I find great difficulty reconciling the granting of such power to the CIA with that basic safeguard of freedom guaranteed to our people by the Constitution known as the check and balance system.

Where is the check on the CIA? Mr. President, do not tell me that the check is to be found in the office of the Presidency of the United States. I speak quite impersonally. It makes no difference to me who occupies the Presidency of the United States when we deal with a question of constitutional power and constitutional guarantees. I say, as I have said before, it is not safe for freedom to grant any agency of government, no matter how much it is attempted to cloak it under the name of security, the unchecked power now vested in the CIA.

Therefore, when the nomination for Director of CIA comes to the floor of the Senate, as long as that unchecked power remains vested in the CIA, it is incumbent upon us to see that the greatest care be exercised by us under the advice and consent clause of the Constitution in respect to that nomination. Unless every shadow of doubt is removed from this nominee as to his qualification, the senior Senator from Oregon will not possibly be able to vote for the confirmation of the nomination.

More than that, I believe that when the nomination is under consideration may be a fitting time to raise this whole question of unchecked CIA power on this side of the aisle. Much has been heard on this side of the aisle in recent years, when a representative of the party of the opposition occupied the White House, in respect to the CIA. As far as I am concerned, these issues are always two-way streets. Therefore, it is incumbent upon the Democratic side of the aisle in the Senate in this session of Congress to take a long, hard look at the question as to whether we are going to continue to permit the CIA to function with unchecked power, so far as the legislative branch of the Government is concerned, which is irreconcilable, in my opinion, with the very precious constitutional guarantee of checks and balances.

Mr. President, do not tell me that it is not safe to permit the elected parliamentary officials of a free people to take a look at the activities of the CIA.